

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 1338 of 2008

Date of Decision: 03.05.2016

Reeta Mahajan and others

.....Appellants

Vs.

Hans Raj and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Prateek Mahajan, Advocate,
for the appellants.

Mr. Neeraj Khanna, Advocate,
for respondent No. 3.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

AMOL RATTAN SINGH, J. (ORAL)

This is an appeal filed by the claimants before the Motor Accidents Claims Tribunal, Amritsar, seeking enhancement of the compensation awarded by the Tribunal to them on account of the death of Sanjeev Mahajan, who unfortunately died in a motor vehicle accident on 24.12.2005. The deceased was the husband of the first appellant and the father of appellants No. 2 and 3, who were aged 8 and 11 years respectively, at the time of the filing of the claim petition, on 07.06.2006.

2. The facts, taken from the award of the Tribunal, are that Sanjeev Mahajan, aged 35 years, was travelling along with his wife, i.e. appellant-claimant No. 1, and others, in car bearing registration No. PB-02-Z-3637, from Amritsar to Jammu on 24.12.2005. Another couple, Satish Mahajan and Sunita Mahajan, are stated to have been travelling in a separate car behind Sanjeev Mahajan and Reeta Mahajan, as all of them were going to attend the kirya ceremony of Saneev Mahajans' maternal grand-mother.

At about 2:00 p.m. the cars are stated to have reached near a '*Dargah*', ahead of Adda Mudhal, when another vehicle, bearing registration No. PB-01-4773, driven by respondent No. 2, allegedly in a rash and negligent manner, came and struck against the car of Saneev Mahajan. All the occupants of the car are stated to have received injuries and were being taken to hospital by Satish Mahajan, but Sanjeev Mahajan is stated to have succumbed to his injuries on the way itself, and consequently, was taken to his residence.

(It needs to be mentioned here that the vehicle bearing registration No. PB-01-4773 has been described through out the Award simply as 'a vehicle', without any particulars of the kind of vehicle that it was).

FIR No. 247, dated 25.12.2005, is also stated to have been lodged at Police Sation Majitha, by Satish Mahajan.

3. The claim petition was thereafter filed under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of

Rs. 40,00,000/- .

The deceased is stated to have been a businessman, 35 years of age, earning Rs. 35,000/- per month.

4. Notice was issued by the Tribunal, in response to which respondents No. 1 and 2, i.e. the owner and driver of the 'offending vehicle', filed a written statement taking preliminary objections with regard to the maintainability of the claim petition, the petition being bad for non-joinder, the deceased not being competent to drive the vehicle, denial of the accident itself, as also the age and income of the deceased.

It was further stated that vehicle No. PB-01-4773 was insured with respondent No. 3 (National Insurance Company Limited) at the time of the accident and that respondent No. 2 had a valid driving license to drive the vehicle.

5. The insurance company filed a separate written statement, again taking the same aforesaid preliminary objections and adding that respondent No. 2 did not have a valid driving license at the time of the accident, with the accident itself again denied by the company.

Other than that, pleas of exaggeration of the compensation claim, non-liability of the company, etc. were taken.

6. A replication was also filed by the claimants, upon which the following issues were framed by the learned Tribunal:-

1. Whether Bindu, respondent No. 2 caused the death of Sanjeev Mahajan by driving the motor vehicle bearing

registration No. PB-01-4773, negligently? OPA

2. Whether the applicants are only legal representative of the deceased? OPA

3. Whether the application is not maintainable? OPR

4. Whether the application is bad for non-joinder of necessary parties? OPR.

5. Whether respondent No. 2 was not holding a legal and valid driving license at the time of accident, if so, to what effect? OPR (3)

6. How much amount the applicants are entitled to as compensation and from which of the respondent? OPA.

7.. The first appellant-claimant and the aforementioned Satish Mahajan stepped into the witness box as AWs 1 and 2 and, as can be seen from the Award of the Tribunal, both these witnesses testified effectively in terms of the contentions in the claim petition.

On the other hand, the second respondent, i.e. the driver of the 'offending vehicle', did not step into the witness box to refute the testimonies of the witnesses on behalf of the claimants, though the owner of the vehicle, i.e. respondent No. 1, testified as RW-1 to the effect that the said vehicle was owned by him. He also proved a copy of the route permit of the vehicle, as also the insurance policy and further admitted that respondent No. 2 was his driver on the said vehicle, who had a valid driving license which he had checked at the time of employing him.

The issue of negligence was decided in favour of the

claimants and against the respondents, against which finding no appeal filed has been brought to the notice of this Court. In fact no appeal is stated to have been filed by the respondents against any part of the Award.

8. Coming therefore, to the issue of compensation payable to the appellants-claimants. The learned Tribunal, on the basis of income tax assessment orders for the Assessment Years 2003-04, 2004-05 and 2005-06, found that in these years, as a Proprietor of a firm, M/s Arya Muni and company, the income of the deceased was Rs. 1,19,637, 1,21,479 and 1,22,221 respectively.

However, in the next paragraph (para No. 21 of the Award), it is stated that in the assessment order for the year 2006-07, the yearly income of the deceased was Rs. 97,200 and for the year 2005-06, ending on 31.03.2005, the income of the deceased was Rs. 62,369/-. Thus, it was held that the last assessed income of the deceased was his last income and consequently, was held as such, rounded off to Rs. 60,000/- per annum.

To the aforesaid amount, a 1/3rd deduction was made towards the personal expenses of the deceased and consequently, the annual dependent income of the claimants was held to be Rs. 40,000/-.

To the aforesaid sum, a multiplier of 13 was applied, with the total loss of income thereby coming to Rs. 5,20,000/-.

In fact, this was the total compensation awarded to

the appellant-claimants, with the three respondents being held jointly and severally liable to pay the same.

9. Mr. Prateek Mahajan, learned counsel for the appellants, submitted before this Court that the Tribunal had wholly erred in assessing the income of the deceased to be only Rs. 60,000/- per year, whereas actually the said amount was the income tax return filed by him in the year 2005-06 as the 'Karta' of his HUF. In fact, the individual income of the deceased, in the assessment year 2005-06, was Rs. 1,22,221, as was rightly noticed by the Tribunal, in paragraph 20 of the Award. Hence, he submitted that, in fact, that should have been the income assessed, with the HUF being the additional income.

In this regard, learned counsel pointed to the records of the case, specifically to the income tax return for the Assessment Year 2005-06, in which, indeed, the assessed income is shown to be Rs. 1,22,221/-, rounded off to Rs. 1,22,220/-.

He also pointed to the return filed in the name of Sanjeev Mahajan HUF, for the assessment year 2005-06, wherein the income is shown as Rs. 62,370/-, of the HUF.

10. Mr. Mahajan, further submitted that the Tribunal had also obviously erred in awarding no compensation towards loss of consortium to appellant No. 1, for loss of love and affection of their father to appellants No. 2 and 3 and towards the last rites and funeral expenses of the deceased, again to appellant No. 1. He further submitted that even loss of future prospects of income have not been assessed and awarded by the Tribunal.

He cited the following judgments in support of his contentions:-

1. Ibrahimhal Abdulbahi Vora vs. Jyotshnaben

Rajubhai Amin 2013 (3) AICJ 223;

2. Kalpanaraj and others vs. Tamil Nadu State

Transport Corporation 2015 (2) SCC 764;

3. Kala Devi and others vs. Bhagwan Das Chauhan and

others 2015 (2) SCC 771;

4. Smt. Neeta w/o Kallappa Kadolkar and others vs.

**The Div. Manager, MSRTC, Kolhapur 2015 (1) RCR
(Civil) 625;**

5. Asha Verman and others vs. Maharaj Singh and

others 2015 (2) RCR (Civil) 520.

11. On the other hand, Mr. Neeraj Khanna, learned counsel for the respondent-insurance company, though on query from the Court could not deny that appellants No. 1 to 3 were entitled to compensation for loss of consortium, love and affection and towards the last rites of the deceased, however, submitted that as regards computation of the income of the deceased, since he was filing an individual and an HUF return both, the Tribunal rightly assessed one of those to be his actual income, i.e. the one in which he is shown to have contributed from his business. He, therefore, prayed for dismissal of the appeal.

12. It may be noticed here that this appeal is again one of those, the records of which were actually burnt in the fire

accident that took place in the record room of this Court in January 2011. Thereafter, the paper book of the records of the Tribunal seem to have been reconstructed from the records available with counsel.

The first zimini order available on the case file is that of 12.02.2014, and from that date onwards, till today, no counsel is seen to have put in an appearance for respondents No. 1 and 2. Though fresh notice could have been issued to the said respondents, however, at this stage I am not inclined to do so, in view of the fact that it is not in dispute that eventually the liability to pay the compensation, i.e. to indemnify the insured (respondent No. 1), falls upon the insurance company, i.e. respondent No. 3 herein, which is duly represented. It is also not in dispute that the insurance company has filed no appeal against the impugned Award, either on the ground of excessive compensation, or on the ground of a wrong an erroneous finding on negligence, or even on the ground that it was not liable to indemnify the insured due to any breach in the policy etc.

Hence, the non-appearance of any counsel for respondents No. 1 and 2 is inconsequential and as such, no notice need be issued to them at this stage, in view of the above, in the opinion of this Court. Consequently, their appearance is held to be dispensed with.

13. Coming therefore, to the question of inadequacy of compensation; first, as regards the non-controversial part, that appellant No. 1, i.e. the widow of the deceased, is undoubtedly

entitled to compensation towards loss of consortium. She is therefore, awarded Rs. 1,00,000/- under that head as per the ratio of the judgments of the Supreme Court in **Rajesh and others vs. Rajbir Singh and others**, (2013) 9 SCC 54 and **Vimal Kanwar and others vs. Kishore Dan and others** (2013) 7 SCC 476, constantly followed thereafter.

The minor daughter and son respectively, of the deceased, are shown to have been 8 years and 11 years of age at the time of filing of the claim petition, as already noticed, which is about five and half months after the unfortunate death of their father. Obviously, both these minors have been deprived of the love and affection, care and guidance of their father for ever and consequently, are awarded a compensation of Rs. 1,00,000/- each, under that head.

It needs to be said here that in **Rajeshs'** case (supra), a total of Rs. 1,00,000/- had been awarded to the three minor children of the accidents' victim, by the hon'ble Supreme Court. On the other hand, in **Vimal Kanwars'** case (supra), the two year old daughter of the deceased was awarded Rs. 2,00,000/- compensation for the loss of love and affection of her father. Consequently, this Court has been awarding between Rs. 1,00,000/- to Rs. 2,00,000/- to the minor children of motor accident victims, depending upon the age of the minor at the time of the accident. Hence, Rs. 1,00,000/- each to the 8 and 11 year old children, i.e. appellants No. 2 and 3, is awarded in this case also.

14. A sum of Rs. 25,000/-, again following the ratio of the aforesaid judgments, is awarded to appellant No. 1 towards the funeral expenses and last rites of her husband.

15. As regards the compensation to be paid for loss of income, from a perusal of the income tax return referred to by the Tribunal, produced by learned counsel for the appellant in Court, as already noticed, shows that the individual income of the deceased, for the financial year ending 31.03.2005 (corresponding to the Assessment Year 2005-06), was indeed Rs. 1,22,221/-, rounded off to Rs. 1,22,220/-. Hence, in my opinion, the Tribunal wholly erred in assessing the income of the deceased as per his HUF return and not as per his individual return. A perusal of the HUF return for 2005-06 shows that the income of the HUF was shown to be from business/production, in which the total turn over was shown to be Rs. 4,52,500/- and the actual profit to be Rs. 61,300/-, for the Assessment Year 2005-06.

Thereafter, even the income tax return for the Assessment Year 2006-07, in the individual capacity of the deceased was produced as Ex. AW-3/4 before the learned Tribunal, in which the individual income of the deceased (he having died on 24.12.2005), is shown to be Rs. 97,200/-. Obviously, the appellants' income had decreased in that year because of the fact that he had died three months before the completion of the financial year 2004-05; otherwise, there was a marginal increase of about Rs. 2,000/- in the successive income tax returns for Assessment Years 2003-04 till 2005-06.

As such, in the opinion of this Court, the last income of the deceased, for the last full financial year that he had earned in, i.e. the year ending on 31.03.2005, corresponding to Assessment Year 2005-06, would be the correct assessment of his income and is accordingly, assessed as Rs. 1,22,220/- per annum, as shown as his net individual income, in the return for that year.

16. However, I am not in agreement with the learned counsel for the appellant, that even the HUF income for the Assessment Year 2005-06, for an amount of Rs. 62,370/-, should be added to the individual income to arrive at the total income earned by the deceased. Though otherwise the argument is not unattractive, however, with no subsequent return for the HUF having been led by way of evidence, after the year 2005-06, it cannot be ascertained as to whether the HUF continued to earn any income after the death of the deceased or not. Obviously, if it continued to earn approximately the same or higher income as it was earning during the life time of the deceased, such income cannot be taken as a loss to the dependents of the deceased, they obviously being a part of his HUF and continuing to receive income of the HUF, even after his death.

Though Mr. Mahajan has cited a judgment of a Division Bench of the Gujarat High Court, in **Ibrahimbhai Abdulbhai Voras'** case (supra), however, in that case it had been specifically proved that there was no income to the HUF after the death of the deceased and as such, it was held by the

Gujarat High Court that the deceased was the only active contributor to the HUF, after whose death, even the HUF contribution came to an end.

In the present case, as already noticed hereinabove, if that had been proved before the Tribunal, the appellants may have been entitled to the loss of income from the HUF also, but in the absence of any proof in that regard, by way of income tax returns of the HUF after assessment year 2005-06, this Court cannot come to a conclusion that the HUF was or was not earning any income after the death of the deceased.

Hence, the income of the deceased is assessed as his individual income of Rs. 1,22,220/-, as already discussed.

To the aforesaid income, a deduction of 1/3rd is to be applied as was also applied by the Tribunal, towards the personal living expenses of the deceased, in terms of the judgment of the Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another**, (2009) 6 SCC 121. Thus, the loss of annual dependent income of the appellants works out to Rs. 81,480/-.

To the aforesaid sum, the deceased admittedly being 35 years of age at the time of his death, a multiplier of 16 is to be applied, also in terms of **Sarla Verma's** case (supra).

Hence, the total compensation payable to the appellants, under the head of loss of income, works out to Rs. 13,03,680/- (Rs. 81,480 x 16), and is accordingly, awarded.

17. Coming to the issue of loss of future prospects of

income, raised by learned counsel for the appellants, it needs to be stated here that the issue of payability of loss of future prospects of income, to dependents of victims of motor vehicle accidents, where the victim was not in a permanent salaried employment, has been referred by the hon'ble Supreme Court to a larger Bench, in the case of **National Insurance Company Ltd. vs. Pushpa** (2015) 9 SCC 166.

Hence, this Court has been assessing the loss of future prospects of income, on the parameters of the law laid down in the cases of **Sarla Verma, Rajesh** and **Vimal Kanwar** (supra), but has been directing that the amount be deposited by the insurance company with the Tribunal, along with interest accruing thereupon, running from the date of the filing of the claim petition till the date of deposit. The Tribunals have been directed further to have the said amount deposited in a fixed deposit carrying maximum interest, in a nationalized bank. Thereafter, depending upon the decision of the Apex Court in **Pushpas'** case (supra), i.e. as to whether the loss of future prospects of income are to be paid or not, to the dependents of those motor accident victims as were not in permanent salaried employment, this Court had directed the amount deposited with the bank to be either disbursed to the claimants, or refunded to the insurance company, as the case may be, in the same manner as an Award of the Tribunal is executed, without further reference to this Court.

18. Accordingly, in the present case also, the calculation of

loss of future prospects of income to the present appellants, would be as is given hereinafter.

The annual income of the deceased having been assessed as Rs. 1,22,220/- per annum, the loss of future prospects of annual income is to be taken as 50 per cent of that sum, his age being 35 years, which amounts to Rs. 61,110/-. Again a 1/3rd deduction is to be made towards the personal expenses of the deceased and as such, the loss of future prospects of dependent income, annually, to the appellants, would be Rs. 40,740/-. Applying a multiplier of 16 to the aforesaid sum, the total loss of future prospects of income to the appellants, if eventually held payable by the ratio of the judgment of the Supreme Court (to be pronounced in **Pushpas'** case (supra)), would be Rs. 6,51,840/-

Consequently, the respondent-insurance company is directed to deposit the aforesaid sum of Rs. 6,51,840/-, along with the interest at the rate of 6% per annum, running from the date of filing of the claim petition to the date of deposit of such sum with the Tribunal, by the insurance company. The learned Tribunal would thereafter, have the entire sum deposited with a nationalized bank, in a fixed deposit carrying maximum interest. As already said, if the ratio of the judgment of the Supreme Court comes to be in favour of the appellants-claimants, they would be entitled to disbursement of the total sum available with the bank, including the interest accrued upon the deposited sum, in the same manner as an Award of the Tribunal is executed.

If, on the other hand, the ratio of the judgment of their Lordships is to the effect that loss of future prospects of income are not payable to the dependents of victims of motor accidents, where such victims were not in permanent salaried employment, then the Insurance Company (Respondent No.3), would be entitled to have the entire sum, including obviously the interest accrued in the bank on the sum deposited, refunded to itself, on making an application to that effect to the Tribunal.

19. Thus, what is held presently, payable immediately, by this judgment, to the appellants, is as follow:-

1.	Towards loss of income=	Rs. 13,03,680/-
2.	Towards loss of consortium (to appellant No. 1)=	Rs. 1,00,000/-
3.	Towards loss of love and affection (to appellants No. 2 and 3, @ Rs. 1,00,000/- each)=	Rs. 2,00,000/-
4.	Towards funeral expenses and last rites (to appellant No. 1)	Rs. 25,000/-
Total		16,28,680/-

The enhancement of compensation being substantial, the aforesaid sum would carry an interest at the rate of 6 per centum per annum, running from the date of the filing of the claim petition, till the date of realization of this amount by the appellants.

20. Of the aforesaid sum, Rs. 7,76,840/- would be disbursed to appellant No. 1 and the remaining Rs. 8,51,840/-

would be equally divided between appellants No. 2 and 3, i.e. they would be each paid Rs. 4,25,920/-. Obviously, the aforesaid sum would each carry interest @ 6% per annum, in terms of what has been held hereinabove.

The appeal is, accordingly, partly allowed, with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

May 03, 2016
nitin